

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Inventor: Bryan Salt
Serial Number: 10/501,488
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Title: EFFICIENT IMAGE
TRANSMISSION

Atty.Dkt.No.: 6257-31902
Examiner: Mirza, Adnan M.
Group/Art Unit: 2443
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CERTIFICATE OF E-FILING TRANSMISSION

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On: April 16, 2012 /Eric K. Wingrove/
Date Eric K. Wingrove, #68,374

APPEAL BRIEF

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
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Sir/Madam:

Further to the Notice of Appeal filed February 16, 2012, Appellant presents this Appeal Brief. Appellant respectfully requests that the Board of Patent Appeals and Interferences consider this appeal.

I. REAL PARTY IN INTEREST

The subject application is owned by C.H.I. Development Mgmt. Ltd. XXVII, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of Delaware.

II. RELATED APPEALS AND INTERFERENCES

No other appeals, interferences or judicial proceedings are known which would be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 52 is directed toward a method. *See, e.g.*, p. 2, l. 17; p. 10, ll. 29-31; Figs. 5-7. The method includes a server storing one or more elements of an image, wherein the one or more image elements are usable to perform an image reconstruction process to generate an image, wherein the image reconstruction process includes a plurality of operations. *See, e.g.*, p. 2, ll. 16-23; p. 5, ll. 19-34; p. 6, l. 19-p. 7, l. 7; p. 8, ll. 4-12; p. 11, l. 7; Figs. 1-3. The method further includes the server identifying a communication parameter associated with a communication path from the server to a first client. *See, e.g.*, p. 11, ll. 21-33. The method also includes the server identifying a processing parameter of the first client. *See, e.g.*, p. 11, ll. 21-33. The method additionally includes the server receiving a request to provide the image to the first client. *See, e.g.*, p. 5, ll. 19-20; Fig. 1. The method further includes for each of the one or more stored image elements: the server selecting a first set of the plurality of operations based at least in part on the processing parameter and the communication parameter; the server performing the first set of the plurality of operations to generate a first processed image element, wherein the performing uses the stored image elements; and the server sending the processed image element to the first client, wherein the first client is configured to perform remaining ones of the plurality of operations using the first processed image element to display the image. *See, e.g.*, p. 9, ll. 21-35; p. 11, ll. 13-19; p. 12, ll. 1-13; p. 14, ll. 13-22.

Independent claim 118 is directed toward an article including a computer-readable medium having instructions stored thereon that, upon execution by a computer system, cause the computer system to perform operations. *See, e.g.*, p. 5, ll. 19-34. Operations include storing a plurality of image elements, wherein the plurality of image elements are usable to perform an image reconstruction process to generate an image, wherein the image reconstruction process includes a plurality of tasks. *See, e.g.*, p. 2, ll. 16-23; p. 5, ll. 19-34; p. 6, l. 19-p. 7, l. 7; p. 8, ll. 4-12; p. 11, l. 7; Figs. 1-3. Operations also include receiving a request to provide the image to a client. *See, e.g.*, p. 5, ll. 19-20; Fig. 1. Operations further include determining a first portion of the plurality of tasks to be performed by the computer system, wherein said determining is based at least in part upon at least one characteristic associated with the client. *See, e.g.*, p. 9, ll. 21-35; p. 11, ll. 13-19; p. 12, ll. 1-13; p. 14, ll. 13-22. Operations additionally include performing the

first portion of the plurality of tasks on at least a portion of the plurality of image elements to produce a partially processed version of the image. *See, e.g.*, p. 8, l. 19-p. 9, l. 35; p. 11, ll. 13-19; p. 12, ll. 1-13; p. 14, ll. 13-22; Fig. 3. Operations also include transmitting the partially processed version of the image to the client, wherein the partially processed version of the image is usable by the client to display the image. *See, e.g.*, p. 8, l. 19-p. 9, l. 35; p. 11, ll. 13-19; p. 12, ll. 1-13; p. 14, ll. 13-22; Fig. 3.

Independent claim 127 is directed toward a system that includes a memory configured to store instructions and a processor configured to retrieve instructions from the memory and execute the instructions to cause the computer system to perform operations. *See, e.g.*, p. 4, ll. 12-14, p. 5, ll. 19-34. Operations include storing a processed version of an image. *See, e.g.*, p. 2, ll. 16-23; p. 5, ll. 19-34; p. 6, l. 19-p. 7, l. 7; p. 8, ll. 4-12; p. 10, ll. 33-p. 11, l. 10. Operations also include storing an unprocessed version of the image usable in an image reconstruction process to generate the processed version of the image. *See, e.g.*, p. 2, ll. 16-23; p. 5, ll. 19-34; p. 6, l. 19-p. 7, l. 7; p. 8, ll. 4-12; p. 10, ll. 33-p. 11, l. 10. Operations further include receiving a request to provide the image to a client. *See, e.g.*, p. 5, ll. 19-20; Fig. 1. Operations additionally include selecting between the processed version of the image and the unprocessed version of the image, wherein said selecting is based at least in part upon at least one characteristic associated with the client. *See, e.g.*, p. 2, ll. 16-23; p. 5, ll. 19-34; p. 6, l. 19-p. 7, l. 7; p. 8, ll. 4-12; p. 10, ll. 33-p. 11, l. 10. Operations also include transmitting the selected version of the image to the client. *See, e.g.*, p. 2, ll. 16-23; p. 5, ll. 19-34; p. 6, l. 19-p. 7, l. 7; p. 8, ll. 4-12; p. 10, ll. 33-p. 11, l. 10.

Independent claim 134 is directed toward a client device that includes a memory configured to store instructions and a processor configured to retrieve instructions from the memory and execute the instructions to cause the client device to perform operations. *See, e.g.*, p. 4, ll. 12-14, p. 5, ll. 19-34. Operations include transmitting a request for an image to a server. *See, e.g.*, p. 5, ll. 19-20; Fig. 1. Operations also include sending to the server at least one processing characteristic associated with the client device, wherein the processing characteristic is indicative of image processing capabilities of the client device. *See, e.g.*, p. 11, ll. 21-33. Operations additionally include receiving from the server a plurality of image elements

processed to an extent determined at least in part by the at least one characteristic associated with the client device, wherein one of the plurality of image elements is processed to a different extent than at least one other of the plurality of image elements. *See, e.g.,* p. 10, ll. 33-p. 11, l. 35. Operations further include generating the image in response to said receiving. *See, e.g.,* p. 11, ll. 18-19. Operations also include displaying the image. *See, e.g.,* p. 5, ll. 25-26.

Independent claim 137 is directed toward an article including a computer-readable medium having instructions stored thereon that, upon execution by a client device, cause the client device to perform operations. *See, e.g.,* p. 5, ll. 19-34. Operations include transmitting a request for an image to a server. *See, e.g.,* p. 5, ll. 19-20; Fig. 1. Operations also include providing to the server at least one processing characteristic associated with the client device, wherein the processing characteristic is indicative of image processing capabilities of the client device. *See, e.g.,* p. 11, ll. 21-33. Operations further include receiving from the server a plurality of image elements processed to an extent determined at least in part by the at least one characteristic associated with the client device, wherein one of the plurality of image elements is processed to a different extent than at least one other of the plurality of image elements. *See, e.g.,* p. 10, ll. 33-p. 11, l. 35. Operations also include generating the image in response to said receiving. *See, e.g.,* p. 11, ll. 18-19. Operations additionally include displaying the image. *See, e.g.,* p. 5, ll. 25-26.

The summary above describes various examples and embodiments of the claimed subject matter; however, the claims are not necessarily limited to any of these examples and embodiments. The claims should be interpreted based on the wording of the respective claims.

IV. ARGUMENT

First ground of rejection:

The Examiner rejected claims 118-126, and 137 under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Appellant traverses the rejection of these claims for at least the following reasons.

Claims 118-126, and 137:

The Examiner stated that these claims are “drawn to a computer readable medium,” and that their “broadest reasonable interpretation” covers a “signal *per se*.” Office Action, Nov. 16, 2011, p. 2-3. Appellant respectfully notes, however, that these claims recite “[a]n article of manufacture including a computer readable medium having instructions stored thereon....” Therefore, each of claims 118-126 and 137 falls squarely within one or more of the statutory categories of patentable subject matter. 35 U.S.C. § 101 (“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” (emphasis added)).

Moreover, the recent Board decision in *Ex Parte Hu* supports Appellant’s assertion that the current claims are statutory. In *Ex Parte Hu*, App. No. 2010-000151, the Board held that a computer readable medium that stores data is tangible media thereby making a claim directed to such a medium statutory under 35 U.S.C. § 101. *Ex Parte Hu*, App. No. 2010-000151, Feb. 9, 2012, p. 4. Here, the claims recite “a computer readable medium having instructions stored thereon.” (emphasis added). According to *Ex Parte Hu*, claims 118-126 and 137 are statutory in their current state.

As a result, the § 101 rejection of claims 118-126 and 137 is erroneous and reversal of the Examiner’s decision is respectfully requested.

Second ground of rejection:

The Examiner rejected claims 52, 54-55, and 118-137¹ under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Hoffberg et al.* (U.S. 6,400,996) in view of *Pulier et al.* (U.S. 2002/0091840). Appellant traverses the rejection of these claims for at least the following reasons. Different groups of claims are addressed under their respective subheadings.

Overview of the cited references:

Hoffberg is directed to “[a]n adaptive interface for a programmable system, for predicting a desired user function, based on user history, as well as machine internal status and context.” *Hoffberg*, Abstract. The presentation of the user interface is adaptive to take advantage of “an understanding that people learn most efficiently through the interactive experiences of doing, thinking, and knowing.” *Id.* at col. 51, ll. 64-66. As a result, *Hoffberg*’s system “seeks to minimize, for an individual user at any given time, the search and acquisition time for the entry of data through the interface.” *Id.* at col. 50, ll. 56-58. Adaptive portions of the interface may include modifiable “color, size, typestyle, and layout of text.” *Id.* at col. 51, ll. 59-61.

“The interface receives the data and formats it based, at least in part, on parameters specific to the client or user. Thus, the presentation of data is responsive to the user, based on user preferences, as opposed to hardware limitations or compatibility issues.” *Id.* at col. 51, ll. 44-49. The presentation is therefore “adaptive to server parameters, user parameters, and the data itself.” *Id.* at col. 51, ll. 57-59.

The cited portions describe a “model-based object extraction system” that is used to “determin[e] the presence of an object within an image.” *Id.* at col. 65, l. 56-col. 66, l. 17; col. 50, ll. 63-65. For example, *Hoffberg* teaches that a facial model may be used to differentiate between “common and variable elements.” *Id.* at col. 65, ll. 63-64. A facial model may include image parameters, such as “eyes, mouth, shape of ears, and other proportions and dimensions”

¹ On page 1 (Summary page) of the Office Action of Nov. 16, 2011, claim 53 was included as being rejected but on page 2, the Examiner indicated that claim 53 was objected to as allowable if incorporated into the independent claims. As the Office Action did not include a detailed rejection of claim 53, Appellant assumes, for the purposes of the Appeal, that claim 53 is objected to and not rejected.

that have “distinguishing power.” *Id.* at col. 65, ll. 63 to col. 66, l. 2. The image elements may be processed “in accordance with specific models to produce differentiating parameters, wherein the data is stored as a reference to the particular model along with the particular data set derived from the image.” *Id.* at col. 66, ll. 6-10. “[B]y employing a model based-object decomposition processing system, recognized elements [of an image] may be described using only a small amount of data and [a] greater proportion of data [is] used to describe unrecognizable elements.” *Id.* at col. 66, ll. 28-36. Hoffberg’s system is highly asymmetric with greater “processing complexity” required to “initially process the image than to subsequently reconstruct” the data. *Id.* at col. 66, ll. 13-16.

Pulier discloses “[a] client-side apparatus and method for handling media capable of being provided by a plurality of provided computer systems to a client computer.” *Pulier*, Abstract. According to *Pulier*, an “MPH [Multiple Provider Hosting] system includes a sniffer module 44, a statistics collector module 46, a metrics calculator module 48, and a stream switcher module 50.” *Id.* at [0012]. Notably, *Pulier*’s entire MPH system (*i.e.*, blocks 44, 46, 48, and 50) is contained within its client device (52). *Id.* at Fig. 1.

In operation, “[t]he MPH system establishes an account with several streaming media providers.... When an end user wants to access the media content, the MPH client-based system uses end user metrics and provider availability to select the best streaming media provider to deliver the media content to that particular end user at that particular time.... During media play, and in real-time, provider bandwidth is monitored, and if it falls below a specified percentage of the required bandwidth, the MPH system switches hosting to the next provider that meets the bandwidth criteria....” *Id.* at [0008] (emphasis added).

Claims 52, 54, and 55:

1. The cited references fail to teach or suggest for each of the one or more stored image elements: the server selecting a first set of the plurality of operations based at least in part on the processing parameter and the communication parameter.

Claim 52 recites, in part, *for each of the one or more stored image elements: the server selecting a first set of the plurality of operations [for an image reconstruction process] based at least in part on the processing parameter [of the first client] and the communication parameter.* Nothing in *Hoffberg* teaches a server selecting anything based at least in part on [a] processing parameter [of the first client] and [a] communication parameter. *Hoffberg* teaches that the presentation of its interface is “based on user preferences, as opposed to hardware limitations or compatibility issues.” *Hoffberg* at col. 51, ll. 44-49. As a result, the presentation is “adaptive to server parameters, user parameters, and the data itself.” *Id.* at col. 51, ll. 57-59. The rejection is flawed in a number of ways. First, the user parameters of *Hoffberg* are user preferences; they are not a *processing parameter [of the first client]*, as *Hoffberg* explicitly teaches that the user preferences are not hardware limitations. Second, the server parameters, user parameters, and data, used in *Hoffberg* to adapt the presentation of the interface are not communication parameters. Third, these parameters in *Hoffberg* are used to adapt the interface. The parameters are not used by a *server selecting a first set of [a] plurality of operations [for an image reconstruction process]*. Appellant notes that the Examiner failed to rebut a similar argument in the previous response and instead simply cited the previously uncited passages that support Appellant’s argument. Office Action, Nov. 16, 2011, p. 9.

The portions cited in the Office Action of Nov. 16, 2011 describe “a model-based pattern recognition system, for determining the presence of an object within an image.” *Hoffberg* at col. 50, ll. 63-65; col. 65, l. 63-col. 66, l. 6. Such determining is dependent on the underlying image data. Underlying image data includes image parameters, such as “eyes, mouth, shape of ears, and other proportions and dimensions” that have “distinguishing power.” *Id.* at col. 65, ll. 63 to col. 66, l. 2. “[B]y employing a model based-object decomposition processing system, recognized elements [of an image] may be described using only a small amount of data and greater proportion of data [is] used to describe unrecognizable elements.” *Id.* at col. 66, ll. 28-

36. The image elements may be processed “in accordance with specific models to produce differentiating parameters, wherein the data is stored as a reference to the particular model along with the particular data set derived from the image.” *Id.* at col. 66, ll. 6-10. Thus, processing is based on the underlying data and has nothing to do with a processing parameter of the first client or a communication parameter.

Moreover, the processing in *Hoffberg* is “highly asymmetric” with “far greater processing complexity to initially process the image than to subsequently reconstruct.” Thus, it appears that there would be no *server selecting a first set of the plurality of operations* based on anything. Instead, *Hoffberg* would process an image in its highly asymmetric manner always using the same processing. Although *Hoffberg* mentions that “available bandwidth may be efficiently used” in its model based-object decomposition processing system, as noted above, it does not utilize any processing parameter of the first client or communication parameter associated with the client. *Id.* at col. 66, l. 18. Any processing is performed based on the underlying data, as described above, and not on anything else. Thus, *Hoffberg*’s image processing, which is content specific, uses greater processing complexity to “initially process the image” and has nothing to do with a “characteristic associated with the client.” Accordingly, *Hoffberg* fails to teach or suggest *selecting a first set of the plurality of operations based at least in part on the processing parameter and the communication parameter*, as recited by claim 52.

Pulier fails to rectify the deficient teachings of *Hoffberg*. Specifically, *Pulier*’s “MPH system [that] switches hosting to the next provider that meets the bandwidth criteria” when provider bandwidth “falls below a specified percentage of the required bandwidth” has nothing to do with the features of *Hoffberg* discussed above.

As a result, the proposed combination of *Hoffberg* and *Pulier* fails to teach or suggest these features of Appellant’s claim.

2. **The cited references fail to teach or suggest for each of the one or more stored image elements . . . the server performing the first set of the plurality of operations to generate a first processed image element, wherein the performing uses the stored image elements.**

Claim 52 recites, in part, *for each of the one or more stored image elements . . . the server performing the first set of the plurality of operations to generate a first processed image element, wherein the performing uses the stored image elements*. The above noted processing scheme of Hoffberg “allows efficient image storage along with ease of object recognition.” Thus, in addition to the above noted deficiencies of Hoffberg, the processing is apparently performed before storing the image objects so that the objects may be efficiently stored. Accordingly, Hoffberg’s processing is not for each of the one or more stored image elements . . . performing the first set of the plurality of operations to generate a first processed image element, wherein the performing uses the stored image elements.

As above, Pulier’s “MPH system [that] switches hosting to the next provider that meets the bandwidth criteria” when provider bandwidth “falls below a specified percentage of the required bandwidth” fails to rectify the deficient teachings of Hoffberg.

As a result, the proposed combination of Hoffberg and Pulier fails to teach or suggest these features of Appellant’s claim.

For at least the reasons above, a *prima-facie* rejection of claim 52 has not been established and the rejection is erroneous. Accordingly, Appellant respectfully requests reversal of the 103 rejection of claim 52. Similar remarks as those given above regarding claim 52 also apply to claims 54-55.

Claims 118-119:

1. **The Examiner has failed to provide a proper *prima-facie* rejection of claim 118.**

Regarding claim 118, the Office Action of November 16, 2011 included claim 118 in the rejection of claim 52. Office Action, Nov. 16, 2011, p. 3. While claims 52 and 118 include

some similar subject matter, the rejection of claim 52 did not address several features present in claim 118 that are not present in claim 52. As a result, some features of claim 118 (e.g., *determining a first portion of the plurality of tasks to be performed by the computer system, wherein said determining is based at least in part upon at least one characteristic associated with the client*, etc.) have never been rejected by any of the four office actions to date.

Further, claim 52 is a method claim while claim 118 is an article of manufacture claim. Thus, the Examiner has erred in not addressing several claimed features, including the statutory class, of claim 118. Accordingly, the Examiner has not provided a proper *prima-facie* rejection of claim 118.

2. The cited references fail to teach or suggest *determining a first portion of the plurality of tasks to be performed by the computer system, wherein said determining is based at least in part upon at least one characteristic associated with the client.*

Claim 118 recites, in part, *determining a first portion of the plurality of tasks to be performed by the computer system, wherein said determining is based at least in part upon at least one characteristic associated with the client*. As detailed above regarding claim 52, *Hoffberg* teaches that its presentation is based on user preferences, server parameters, and the actual data, none of which are a characteristic associated with the client. Further, none of the user preferences, server parameters, or data, is used in *Hoffberg* to *determin[e] a first portion of the plurality of tasks to be performed by the computer system*. Instead, they are simply used to adapt the display of an interface.

Also as detailed above, *Hoffberg*'s processing is based on the underlying data and is performed asymmetrically. *Hoffberg* mentions that its asymmetric processing allows for efficient bandwidth use. That processing, however, has nothing to do with a *characteristic associated with the client*, as recited by claim 118. Thus, the processing of *Hoffberg* does not include *determining a first portion of the plurality of tasks to be performed by the computer system, wherein said determining is based at least in part upon at least one characteristic associated with the client*.

Pulier fails to rectify the deficiencies of *Hoffberg* regarding claim 118. Specifically, *Pulier*'s "MPH system [that] switches hosting to the next provider that meets the bandwidth

criteria” when provider bandwidth “falls below a specified percentage of the required bandwidth” has nothing to do with the above features.

For at least the reasons above, a *prima-facie* rejection of claim 118 has not been established and the rejection is erroneous. Accordingly, Appellant respectfully requests reversal of the 103 rejection of claim 118. Similar remarks as those given above regarding claim 118 also apply to claim 119.

Claims 120-126:

1. The cited references fail to teach or suggest *wherein the at least one characteristic includes a processing speed of the client and a bandwidth of a communication channel available to the client, and wherein said determining comprises: identifying the processing speed; identifying the bandwidth; and selecting the first portion of the plurality of tasks to be performed by the computer system based at least in part on the processing speed and the bandwidth.*

As noted above, the cited references fail to teach or suggest *determining a first portion of the plurality of tasks to be performed by the computer system, wherein said determining is based at least in part upon at least one characteristic associated with the client.* Claim 120 further specifies that *the at least one characteristic includes a processing speed of the client and a bandwidth of a communication channel available to the client and further includes identifying the processing speed; identifying the bandwidth; and selecting the first portion of the plurality of tasks to be performed by the computer system based at least in part on the processing speed and the bandwidth.*

As described in more detail above regarding claims 52 and 118, Hoffberg fails to teach or suggest *a processing parameter [of the client].* Similarly, Hoffberg fails to teach or suggest *the processing speed of the client.* As a result, Hoffberg cannot teach *selecting the first portion of the plurality of tasks to be performed by the computer system based at least in part on the processing speed and the bandwidth.*

The Office Action relied on Pulier at paragraph [0013] to allegedly teach this feature. Office Action, Nov. 16, 2011, p. 6. Pulier paragraph [0013] simply teaches a client-side “metrics calculator module” monitoring bandwidth of streaming media. Pulier at [0013]. Nothing in Pulier teaches or suggests identifying the processing speed [of the client] or selecting the first portion of the plurality of tasks to be performed by the computer system based at least in part on the processing speed and the bandwidth. It appears that the Examiner ignored most of claim 120 except for the word “bandwidth.”

For at least the reasons above, a *prima-facie* rejection of claim 120 has not been established and the rejection is erroneous. Accordingly, Appellant respectfully requests reversal of the 103 rejection of claim 120. Similar remarks as those given above regarding claim 120 also apply to claims 121-126.

Claims 127-133:

1. The Examiner has failed to provide a proper *prima-facie* rejection of claim 127.

Regarding claim 127, the Office Action of November 16, 2011 included claim 127 in the rejection of claim 52. Office Action, Nov. 16, 2011, p. 3. While claims 52 and 127 include some similar subject matter, the rejection of claim 52 did not address several features present in claim 127 that are not present in claim 52. As a result, some features of claim 127 (e.g., *selecting between the processed version of the image and the unprocessed version of the image, wherein said selecting is based at least in part upon at least one characteristic associated with the client*, etc.) have never been rejected by any of the office actions to date. Further, claim 52 is a method claim while claim 127 is a system claim. Thus, the Examiner has erred in not addressing several claimed features, including the statutory class, of claim 127. Accordingly, the Examiner has not provided a proper *prima-facie* rejection of claim 127.

2. The cited references fail to teach or suggest *selecting between the processed version of the image and the unprocessed version of the image, wherein said selecting is based at least in part upon at least one characteristic associated with the client*.

Claim 127 recites, in part, *selecting between the processed version of the image and the unprocessed version of the image, wherein said selecting is based at least in part upon at least one characteristic associated with the client*. As described above regarding claim 52, Hoffberg's presentation is based on user preferences, server parameters, and the underlying data and Hoffberg's processing is based on the underlying data, none of which is a *characteristic associated with the client*. Moreover, Hoffberg also does not teach or suggest *selecting between*

[a] processed version of the image and [an] unprocessed version of the image . . . based at least in part upon at least one characteristic associated with the client.

Pulier fails to rectify the deficiencies of *Hoffberg* regarding claim 118. Specifically, *Pulier*'s "MPH system [that] switches hosting to the next provider that meets the bandwidth criteria" when provider bandwidth "falls below a specified percentage of the required bandwidth" has nothing to do with the above features. For at least the reasons above, a *prima-facie* rejection of claim 127 has not been established and the rejection is erroneous. Accordingly, Appellant respectfully requests reversal of the 103 rejection of claim 127. Similar remarks as those given above regarding claim 127 also apply to claims 128-133.

Claim 134:

1. The Examiner has failed to provide a proper *prima-facie* rejection of claim 134.

Regarding claim 134, the Office Action of November 16, 2011 included claim 134 in the rejection of claim 52. Office Action, Nov. 16, 2011, p. 3. While claims 52 and 134 include some similar subject matter, the rejection of claim 52 did not address several features present in claim 134 that are not present in claim 52. As a result, some features of claim 134 (e.g., *receiving from the server a plurality of image elements processed to an extent determined at least in part by the at least one characteristic associated with the client device, wherein one of the plurality of image elements is processed to a different extent than at least one other of the plurality of image element*, etc.) have never been rejected by any of the office actions to date. Further, claim 52 is a method claim while claim 134 is an apparatus claim. Thus, the Examiner has erred in not addressing several claimed features, including the statutory class, of claim 134. Accordingly, the Examiner has not provided a proper *prima-facie* rejection of claim 134.

2. The cited references fail to teach or suggest sending to the server at least one processing characteristic associated with the client device, wherein the processing characteristic is indicative of image processing capabilities of the client device.

As noted above regarding claim 52, both cited references fail to teach or suggest anything related to a *processing characteristic associated with the client device*. Claim 134 further recites sending to the server at least one processing characteristic associated with the client device, wherein the processing characteristic is indicative of image processing capabilities of the client. As neither reference teaches or suggests a processing characteristic, neither could teach or suggest sending such a processing characteristic to a server.

3. The cited references fail to teach or suggest receiving from the server a plurality of image elements processed to an extent determined at least in part by the at least one characteristic associated with the client device, wherein one of the plurality of image elements is processed to a different extent than at least one other of the plurality of image elements.

As discussed above, Hoffberg's image processing is specific to the underlying data and does not include *receiving from the server a plurality of image elements processed to an extent determined at least in part by [] at least one characteristic associated with [a] client device*. Further, while Pulier discloses a client receiving "streaming media," there does not appear to be anything in Pulier to indicate that such "streaming media" includes *image elements processed to an extent determined at least in part by [] at least one characteristic associated with [a] client device*, as recited in claim 134, with *one of the plurality of image elements [being] processed to a different extent than at least one other of the plurality of image elements*.

For at least the reasons above, a *prima-facie* rejection of claim 134 has not been established and the rejection is erroneous. Accordingly, Appellant respectfully requests reversal of the 103 rejection of claim 134.

Claims 135 and 136:

1. The Examiner has failed to provide a proper *prima-facie* rejection of claims 135 and 136.

Regarding claims 135 and 136, the Office Action of November 16, 2011 included claims 135 and 136 in the rejection of claim 52. Office Action, Nov. 16, 2011, p. 3. Claims 135 depends from claim 134 and claim 136 depends from claim 135. As noted above, while claims 52 and 134 include some similar subject matter, the rejection of claim 52 did not address several features present in claim 134 that are not present in claim 52. Additional features are present in claims 135 and 136 that are not present in either of claims 52 or 134. Thus, the Examiner has erred in not addressing several claimed features of claims 134 and 135. Accordingly, the Examiner has not provided a proper *prima-facie* rejection of claims 134-135.

2. The cited references fail to teach or suggest at least *receiving from the server an image reconstruction instruction*.

Appellant reviewed the cited references and cannot fathom what, in either reference, could be construed as *receiving from the server an image reconstruction instruction*. The cited portions of *Hoffberg* in the rejection of claim 52 (given that there is no rejection of claims 135 and 136) have nothing to do with image reconstruction instructions. *Pulier* simply teaches that its client selects a media stream from one of a number of sources. But *Pulier* is completely void of any teaching or suggestion regarding *receiving from the server an image reconstruction instruction*.

For at least the reasons above, a *prima-facie* rejection of claims 135 and 136 has not been established and the rejection is erroneous. Accordingly, Appellant respectfully requests reversal of the 103 rejection of claims 135 and 136.

Claim 137:

1. The Examiner has failed to provide a proper *prima-facie* rejection of claim 137.

Regarding claim 137, the Office Action of November 16, 2011 included claim 137 in the rejection of claim 52. Office Action, Nov. 16, 2011, p. 3. While claims 52 and 137 include some similar subject matter, the rejection of claim 52 did not address several features present in claim 137 that are not present in claim 52. As a result, some features of claim 137 (e.g., *receiving from the server a plurality of image elements processed to an extent determined at least in part by the at least one characteristic associated with the client device, wherein one of the plurality of image elements is processed to a different extent than at least one other of the plurality of image elements*, etc.) have never been rejected by any of the office actions to date. Further, claim 52 is a method claim while claim 137 is an article of manufacture claim. Thus, the Examiner has erred in not addressing several claimed features, including the statutory class, of claim 137. Accordingly, the Examiner has not provided a proper *prima-facie* rejection of claim 137.

2. The cited references fail to teach or suggest *providing to the server at least one processing characteristic associated with the client device, wherein the processing characteristic is indicative of image processing capabilities of the client device; [or] receiving from the server a plurality of image elements processed to an extent determined at least in part by the at least one characteristic associated with the client device, wherein one of the plurality of image elements is processed to a different extent than at least one other of the plurality of image elements.*

Appellant asserts that *Hoffberg*, in view of *Pulier*, fails to teach or suggest this feature of claim 137 for at least the same reasons given above regarding claim 134.

For at least the reasons above, a *prima-facie* rejection of claim 137 has not been established and the rejection is erroneous. Accordingly, Appellant respectfully requests reversal of the 103 rejection of claim 137.

CONCLUSION

For the foregoing reasons, it is submitted that the Examiner's rejection of claims 52, 54-55, and 118-137 was erroneous, and reversal of the Examiner's decision is respectfully requested.

The Commissioner is authorized to charge the appeal brief fee of \$620.00 and any other fees that may be due to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 50-1505/6257-31902/EW.

Respectfully submitted,

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V. CLAIMS APPENDIX

The claims on appeal are as follows.

52. A method comprising:
- a server storing one or more elements of an image, wherein the one or more image elements are usable to perform an image reconstruction process to generate an image, wherein the image reconstruction process includes a plurality of operations;
 - the server identifying a communication parameter associated with a communication path from the server to a first client;
 - the server identifying a processing parameter of the first client;
 - the server receiving a request to provide the image to the first client;
 - for each of the one or more stored image elements:
 - the server selecting a first set of the plurality of operations based at least in part on the processing parameter and the communication parameter;
 - the server performing the first set of the plurality of operations to generate a first processed image element, wherein the performing uses the stored image elements; and
 - the server sending the processed image element to the first client, wherein the first client is configured to perform remaining ones of the plurality of operations using the first processed image element to display the image.
54. The method of claim 53, wherein at least one of the first processed image elements is a larger file size than the corresponding at least one of the second processed image elements.
55. The method of claim 52, wherein said selecting is performed to reduce rendering time for the image by the client.

118. An article of manufacture including a computer-readable medium having instructions stored thereon that, upon execution by a computer system, cause the computer system to perform operations comprising:

- storing a plurality of image elements, wherein the plurality of image elements are usable to perform an image reconstruction process to generate an image, wherein the image reconstruction process includes a plurality of tasks;
- receiving a request to provide the image to a client;
- determining a first portion of the plurality of tasks to be performed by the computer system, wherein said determining is based at least in part upon at least one characteristic associated with the client;
- performing the first portion of the plurality of tasks on at least a portion of the plurality of image elements to produce a partially processed version of the image; and
- transmitting the partially processed version of the image to the client, wherein the partially processed version of the image is usable by the client to display the image.

119. The article of manufacture of claim 118, the operations further comprising:

- storing a set of image processing instructions at the computer system; and
- transmitting the set of image processing instructions to the client, wherein the client is configured to execute the set of image processing instructions using the partially processed version of the image to display the image.

120. The article of manufacture of claim 118, wherein the at least one characteristic includes a processing speed of the client and a bandwidth of a communication channel available to the client, and wherein said determining comprises:

identifying the processing speed;

identifying the bandwidth; and

selecting the first portion of the plurality of tasks to be performed by the computer system based at least in part on the processing speed and the bandwidth.

121. The article of manufacture of claim 120, wherein said selecting minimizes a time between the computer system performing said transmitting and the client displaying the image.

122. The article of manufacture of claim 120, the operations further comprising:
selecting a second portion of the plurality of tasks to be performed by the client.

123. The article of manufacture of claim 120, wherein the selecting the first portion of the plurality of tasks includes determining that the bandwidth is above a threshold.

124. The article of manufacture of claim 120, wherein the selecting the first portion of the plurality of tasks includes determining that the bandwidth is below a threshold.

125. The article of manufacture of claim 120, wherein the selecting the first portion of the plurality of tasks includes determining that the processing speed of the client is below a threshold.

126. The article of manufacture of claim 120, wherein the selecting the first portion of the plurality of tasks includes determining that the processing speed of the client is above a threshold.

127. A computer system comprising:
a memory configured to store instructions; and

a processor configured to retrieve instructions from the memory and execute the instructions to cause the computer system to perform operations comprising:
storing a processed version of an image;
storing an unprocessed version of the image usable in an image reconstruction process to generate the processed version of the image;
receiving a request to provide the image to a client;
selecting between the processed version of the image and the unprocessed version of the image, wherein said selecting is based at least in part upon at least one characteristic associated with the client; and
transmitting the selected version of the image to the client.

128. The computer system of claim 127, the operations further comprising:
storing an image processing instruction that is usable by the client to generate the processed version of the image based at least in part on the unprocessed version of the image; and
transmitting the image processing instruction to the client.
129. The computer system of claim 127, wherein the at least one characteristic comprises a type of processor used by the client.
130. The computer system of claim 127, wherein the at least one characteristic comprises a type of display used by the client.
131. The computer system of claim 127, wherein the at least one characteristic comprises a software program used by the client.
132. The computer system of claim 127, wherein the at least one characteristic comprises a bandwidth of a communication channel used by the client.
133. The computer system of claim 127, wherein the at least one characteristic comprises a transmission protocol used by the client.

134. A client device comprising:
a memory configured to store instructions; and
a processor configured to retrieve instructions from the memory and execute the instructions to cause the client device to perform operations comprising:
transmitting a request for an image to a server;
sending to the server at least one processing characteristic associated with the client device, wherein the processing characteristic is indicative of image processing capabilities of the client device;
receiving from the server a plurality of image elements processed to an extent determined at least in part by the at least one characteristic associated with the client device, wherein one of the plurality of image elements is processed to a different extent than at least one other of the plurality of image elements;
generating the image in response to said receiving; and
displaying the image.
135. The client device of claim 134, the operations further comprising:
receiving from the server an image reconstruction instruction.
136. The client device of claim 135, wherein the generating comprises:
applying the image reconstruction instruction to the received plurality of image elements to generate the image.

137. An article of manufacture including a computer-readable medium having instructions stored thereon that, upon execution by a client device, cause the client device to perform operations comprising:

transmitting a request for an image to a server;

providing to the server at least one processing characteristic associated with the client device, wherein the processing characteristic is indicative of image processing capabilities of the client device;

receiving from the server a plurality of image elements processed to an extent determined at least in part by the at least one characteristic associated with the client device, wherein one of the plurality of image elements is processed to a different extent than at least one other of the plurality of image elements;

generating the image in response to said receiving; and
displaying the image.